The true doctrine of *cy pres* must not be confounded, as is sometimes done, with the more general principles which lead courts of equity to sustain and enforce charitable gifts, where the trustee or beneficiaries are simply *uncertain*. There is a clear distinction between them, though the doctrine of *cy pres* may be to some extent an expansion or enlargement of the other principle. A review of the authorities shows that some cases in which the courts have professedly relied on the doctrine of *cy pres* and which are cited as illustrations of its application seem to be nothing more than instances in which trusts with uncertain trustees or objects have been sustained. On the other hand, those courts which have utterly rejected the doctrine refuse to allow a trust to fail for want of a trustee or for failure of the trustee designated by the donor. This shows, therefore, that the latter class of courts could accept the doctrine of *cy pres* and apply it as a part of the regular jurisdiction of equity without making a radical departure from their present holding, and without throwing themselves out of line with our general principles of administering trusts.

PRIORITY BETWEEN COURTS OF CONCURRENT JURISDICTION.—It is essential to the orderly administration of justice, and to prevent unseemly conflicts between courts whose jurisdictions embrace the same subjects and persons, that some well defined rules should exist regarding the priority of one such court over another. The rules determining the priority between courts of concurrent jurisdiction seem, for the most part, to be very well settled; but the question is frequently presented, and becomes of especial importance as between the courts of the United States and those of the several states.

There are two classes of cases in which the question of priority of jurisdiction as between co-ordinate courts becomes important. The first class consists of those cases in which the actual or constructive possession of property by one court is interfered with by the officers of another court of concurrent jurisdiction. The second class is composed of those cases in which there is no interference with the possession of a court, but an interference with the jurisdiction of that court by another co-ordinate court assuming control over property the possession of which may become necessary to the exercise of the first court's jurisdiction in the progress of the cause pending before it.

The rules governing the first class of cases seem to be well settled. Where a court of competent jurisdiction has, by appropriate proceedings, taken property into its possession through its officers, the property is thereby withdrawn from the jurisdiction of all other co-ordinate courts. Any other court of concurrent jurisdiction is without power to render any judgment concerning, or to disturb in any manner, the title, possession, or control of the property. A court, during the continuance of its possession of the property, as incident thereto and as ancillary to the suit in which the possession

was acquired, has jurisdiction to hear and determine all questions respecting the title, possession and control of the property.[1] This rule is not based upon the superiority of one court over another, but upon the necessity of preventing a conflict between the courts over the possession of the property, which would be unseemly and conducive of injustice.[2]

This rule, however, is not strictly adhered to in bankruptcy cases. Under the provisions of the bankruptcy act, the rule as stated above has three exceptions: First, where possession of the state court has created a lien by legal proceedings within four months of the filing of the petition and while the debtor is insolvent, the state court does not retain possession, but the property must be surrendered to the bankruptcy court.[3] Second, where the property is in the possession of an assignee for the benefit of creditors, or of a receiver or trustee appointed outside of bankruptcy, and such assignment, receivership or trusteeship was created within four months preceding the filing of the bankruptcy petition, the bankruptcy court takes the property involved out of the possession of the state court.[4] Third, where the property at the time of the bankruptcy is in the custody of a state court under state insolvency or state bankruptcy proceedings, the property is taken over by the bankruptcy court.[5]

The second class of cases—where one court has first acquired jurisdiction of a cause which may require for its disposition the possession of certain property but has not acquired possession of that property, and in the meantime another court assumes control over the property—has caused much more difficulty. Where the parties, issues and remedies of both suits are substantially identical, it is a well settled rule of comity that the court first to acquire possession of the property, but which was last to acquire jurisdiction of the cause, will turn over its prior possession to the court first ac-

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[1] Ford *v.* Watts, 95 Va. 192, 28 S. E. 179; Missouri Pac. Ry. Co. *v.* Love, 61 Kan. 433, 59 Pac. 1072; Hagan *v.* Lucas, 10 Pet. 400; Wabash Railroad Co. *v.* Adelbert College, 208 U. S. 609. In the case last cited the state court did not entertain jurisdiction of the case until the property involved had been transfered by the receiver appointed by the federal court, and the receiver had been discharged. Yet the decree of the federal court in the case was such as to reserve the right to retake the property for the satisfaction of other prior claims, should such be presented. It was held that the state court had no right to take jurisdiction of the cause.

[2] See Wabash Railroad Co. *v.* Adelbert College, *supra.* The courts have laid down many different rules as to when property comes into possession of the court. Either actual or constructive possession is all that is required. For cases holding that constructive possession is acquired when a receiver has been appointed and has qualified, see Central National Bank *v.* Stevens, 169 U. S. 432.

[3] Bankruptcy Act, § 67 (f).

[4] This result is reached variously by §§ 67 (f), 67 (c) and 67 (e) of the Bankruptcy Act.

[5] U. S. Const. Art. 1, par. 8, gives Congress authority to establish uniform laws on the subject of bankruptcies throughout the United States.

quiring jurisdiction of the cause.[6] But where the parties, issues and relief sought in the two suits are not substantially identical, there is a conflict. The majority opinion is that in such cases the possession need not be turned over to the court first acquiring jurisdiction of the suit though the possession of the property would be necessary to a proper disposition of that cause.[7] The reason for the rule is that one court need not defeat its own jurisdiction where there is in fact no conflict of jurisdiction, but only a conflict as to the property involved.

In the recent case of *Empire Trust Co.* v. *Brooks*, 232 Fed. 641, one who was both a stockholder and bondholder of an insolvent corporation filed a bill in the district court of Boxar County, Texas, the purpose of which was the appointment of a receiver of a corporation. Later, but on the same day, the trustee under a mortgage given by the corporation filed a bill in the district court of the United States for the Western District of Texas, praying for a foreclosure of the mortgage and an appointment of a receiver of the property of the corporation pending final decree, and the receiver was appointed. Later, the state court appointed a receiver of the corporation, who filed an intervention in the suit before the federal court asking that the receiver appointed by that court in the foreclosure suit be directed to turn over the assets in his possession to the receiver appointed by the state court. The petition was dismissed by the court, on the ground that the two suits were not for the same purpose, the suit in the state court not requiring for its determination the foreclosure of the mortgage. Under such circumstances there could be no conflict of jurisdiction.

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[6] Reisner *v.* Gulf C. & S. F. Ry. Co., 89 Tex. 656, 36 S. W. 53, 59 Am. St. Rep. 84, 33 L. R. A. 171. May *v.* Printup, 59 Ga. 128.

[7] De La Vergne Ref. Mach. Co. *v.* Palmetto Brewing Co., 72 Fed. 579; State Trust Co. *v.* National Land Imp. & M. Co., 72 Fed. 575; Leigh *v.* Green, 62 Neb. 344, 86 N. W. 1093. *Contra,* McKinney *v.* Kansas Natural Gas Co., 206 Fed. 772.